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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/428,508 10/27/99 CALLINAN

G 1423-9

PM82/0718  
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EXAMINER

LAGMAN, F

ART UNIT

PAPER NUMBER

3673

DATE MAILED:

07/18/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/428,508

Applicant(s)  
Callinan et al

Examiner  
Frederick L. Lagman

Art Unit  
3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 4/26/01
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-14 and 36-39 is/are allowed.
- 6) ☒ Claim(s) 15-17, 21-31, 40-42, and 44-46 is/are rejected.
- 7) ☒ Claim(s) 18-20, 32-35, 43, and 47 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 4/26/01 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some\* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

Art Unit: 3673

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 4/26/01 have been approved.

### ***Claim Objections***

3. Claim 24 is objected to because of the following informalities: line 2, the “,” between “1” and “or” should be deleted, and the second occurrence of “or” should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3673

5. Claims 17 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. As to claim 17, the use of improper alternative language such as “and/or” renders the claim indefinite.

7. Claim 23 recites the limitation "the outer portion" in line 1. There is insufficient antecedent basis for this limitation in the claim. Furthermore, the dependency appears to be incorrect ie. “in claim 10.....in any one of claims 1-14”, therefore being redundant on claim 10 itself.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 15, 16, 17, 21, 22, 24, 40-42, and 44-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Foehrkolb #5,378,088. Foehrkolb discloses a retaining wall comprising a reinforcing section 20, 23 extending rearwardly from the wall, the reinforcing sections made from portions cut from one or more tires. The reinforcing section being made by joining together a

Art Unit: 3673

plurality 20, 23 of tire tread sections. The outer portion being formed from a plurality of elements 13 arranged in a plurality of courses.

10. Claims 25 and 29-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Soviet Union reference #1395-737. Soviet '737 inherently discloses a method for forming a retaining wall comprising the steps of forming a base 3 for the retaining wall adjacent to the embankment 2; and arranging a plurality of tires in a plurality of courses adjacent to the embankment and the along the base. The tires being filled in with fill material such as soil and plants.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Soviet Union reference #1395-737 in view of German reference #38 29 615. Soviet '737 discloses method for forming the retaining wall except for the offset being at an angle of 10 to 20 degrees. German '615 teaches that it is known to provide a retaining wall comprised of plurality of tires that are offset at an angle of 10-20 degrees as shown in figure 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an offset at an

Art Unit: 3673

angle of 10-20 degrees, as taught by German '615 in order to provide a retaining wall with a desired inclination.

***Allowable Subject Matter***

13. Claims 1-14, 24, and 36-39 are allowed.

Claims 18, 19, 20, 32-35, 43, and 47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claim 23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action.

***Response to Arguments***


15. Applicant's arguments with respect to claims 15-35 and 40-47 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3673

*Conclusion*

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick L. Lagman whose telephone number is (703) 305-7456.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. David Bagnell, can be reached at (703) 308-2151. The fax phone number for this Group is (703) 305-7687.

  
DAVID BAGNELL  
SUPERVISORY PATENT EXAMINER  
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FLL 

July 6, 2001